

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Maurice Gene                    ) Application No. DC-66/  
Hand, Director of the                            ) SC-005  
Communications Department of the                )  
Nebraska Public Service                           )  
Commission and Mr. Jeffrey L.                    )  
Pursley Director of the Nebraska                 )  
Universal Service Fund                            )  
Department of the Nebraska                        )  
Public Service Commission,                        )  
                                                  )  
                                          Complainants,    )  
v.                                                        ) COMPLAINT  
                                                      )  
Long Distance Savings,                            )  
                                                      )  
                                          Defendant.        )  
                                                              ) Filed: May 18, 2004

COMES NOW Maurice Gene Hand, Director of the Communications Department, and Jeffrey L. Pursley, Director of the Nebraska Universal Service Fund Department (collectively referred to as "Complainants") of the Nebraska Public Service Commission (Commission) for cause against Long Distance Savings (Defendant) and alleges as follows:

1. Pursuant to Neb. Rev. Stat. §§ 75-109 and 86-122 (2002 Supplement), the Commission is vested with the power and authority, and is given the duty to certificate, supervise and regulate interexchange carriers operating for hire in intrastate commerce in the State of Nebraska. Further, the Commission is empowered to do all things necessary for the exercise of such power, authority and jurisdiction. The Commission is further authorized by Neb. Rev. Stat. § 86-202 to "ensure that all subscribers are protected from the unauthorized switching of a telecommunications company selected by the subscriber to provide telecommunications service."
2. Pursuant to Neb. Rev. Stat. § 75-156, the Commission may suspend, revoke, or amend certificates, and levy sanctions or fines against every telecommunications company and every person who violates any provision of Nebraska law in regard to the regulation of such telecommunications carriers and persons, or who

fails to obey any order, decision or regulation of the Commission.

3. The Commission has the authority, pursuant to Neb. Rev. Stat. § 75-131, to investigate a party under its jurisdiction and order a hearing on its own motion when the Commission believes that the party is in violation of the law or any order of the Commission.
4. The Commission has authority to require all telecommunications companies, as defined by Neb. Rev. Stat. § 86-322, to contribute to the Nebraska Universal Service Fund mechanism established by the Commission and to fine companies who act contrary to the Nebraska Telecommunications Universal Service Fund Act, Commission rules, regulations and orders. Neb. Rev. Stat. § 86-324. See also, Neb. Rev. Stat. § 75-156.
5. On January 20, 2004, the Communications Department of the Commission received notice that Defendant was in possible violation of Nebraska law, Commission statutes, and Commission Orders. As a result of this investigation, the Communications and the Nebraska Universal Service Fund Departments of the Commission have reason to believe that the Defendant has operated in violation of Nebraska Law, Commission rules and Commission Orders. The alleged violations are more fully set out in the following paragraphs.

#### COUNT I

6. On November 6, 2001, in Docket No. C-2540, the Certificate of Public Convenience and Necessity held by Long Distance Savings authorizing it to provide interexchange telecommunications services within the State of Nebraska was revoked. A copy of the Commission's Order is attached hereto as "Attachment 1" and fully incorporated herein.
7. Defendant has been offering telecommunications services for hire in the State of Nebraska

subsequent to the revocation of its Certificate of Public Convenience and Necessity.

8. Defendant has, therefore, operated in violation of Neb. Rev. Stat. § 86-128.

#### COUNT II

9. On November 24, 2001, Protel Advantage, Inc., d/b/a Long Distance Savings, filed an annual report (Compliance Filing) with the Nebraska Public Service Commission. The Compliance Filing reported total, interstate and intrastate revenues associated with the Defendant's Nebraska telecommunications operations. A copy of the 2001 Compliance Filing is attached hereto as "Attachment 2" and fully incorporated herein.
10. Protel Advantage, Inc., does not currently and has never held a Certificate of Public Convenience and Necessity from the Commission authorizing it to provide telecommunications services for hire in Nebraska.
11. Neither Protel Advantage, Inc. nor Long Distance Savings has collected or remitted any intrastate revenue generated by said companies to the Nebraska Universal Service Fund.
12. Long Distance Savings has been under an obligation by virtue of the Nebraska Telecommunications Universal Service Fund Act and by Commission Orders entered in NUSF-1 and NUSF-4 to remit a portion of its intrastate revenues to the Nebraska Universal Service Fund of the Commission. Although Long Distance Savings has operated and has had customers within the state of Nebraska it has not reported any of its revenues to the Director of the Nebraska Universal Service Fund. Although Long Distance Savings has operated and has had customers within the state of Nebraska, it has not billed and collected the Nebraska Universal Service Fund surcharge consistent with state law, Commission rules and regulations and Commission orders.

13. Defendant has therefore acted in violation of Neb. Rev. Stat. § 86-324, Neb. Admin. Code Title 291 Chapter 10, and in violation of Commission Orders entered in NUSF-1 and NUSF-4.

COUNT III

14. On or about October 2003, Defendant through its lawful agents or assigns contacted several business subscribers in Benkelman, Nebraska. The business subscribers included, but were not limited to, Kerchal Supply, New York Life, Jim's Custom Cabinets, The Hall Closet, Top Hat Ag, H&C Video, Benkelman Pharmacy, The Ark Daycare, and Shorzman Refrigeration. A letter dated January 22, 2004, and signed by said business subscribers is attached hereto as "Attachment 3" and fully incorporated herein.
15. During the time frame provided in paragraph 14 above, Defendant, through its agents or assigns, held itself out to several business subscribers as the Benkelman Telephone Company, a local exchange carrier authorized to provide local telecommunications service in Benkelman, Nebraska.
16. During said time frame, Defendant, through its agents or assigns, fraudulently misrepresented to several business subscribers that it was, or was acting upon the direction or behalf of, Benkelman Telephone Company, knowing that such information was false, in order to induce or solicit the subscribers' reliance on Defendant for the purpose of switching those subscribers' long distance service to Long Distance Savings.
17. During said time frame, Defendant did, in fact, switch several subscribers' long distance service to Long Distance Savings.
18. As a consequence of the false or reckless statements of Defendant or its agents, said subscribers and Benkelman Telephone Company were materially harmed and suffered losses, including but not limited to, financial losses as a result

of increased long distance charges, switching fees, and time spent in changing service back to their preferred long distance carrier.

19. The processes and procedures used by Long Distance Savings were fraudulent and deceptive and were in violation of the Telephone Consumer Slamming Prevention Act at Neb. Rev. Stat. § 86-201 et seq., and the Commission's Telecommunications Rules and Regulations, Nebraska Administrative Code Title 291, Chapter 5, Section 5.
20. Specifically, Long Distance Savings submitted a change in said subscribers "intraLATA interexchange service and interLATA interexchange service without obtaining:
  - i. Written change authorization from the subscriber;
  - ii. Toll-free electronic authorization placed from the telephone number which is the subject of the change of service order; or
  - iii. Oral authorization obtained by an independent third party..."

in violation of Neb. Rev. Stat. § 86-205.

21. Additionally, Long Distance Savings, by and through its agents or assigns, used marketing practices in violation of Neb. Rev. Stat. § 86-210, which requires the Commission to "ensure that subscribers are protected from deceptive practices in the obtaining of authorizations and verifications required by section 86-205."

WHEREFORE, Complainants pray that this Commission take the following action including, but not limited to, imposing administrative penalties on Defendant for an amount up to, but not exceeding, \$10,000 per violation per day and up to \$2 million dollars per violation per year consistent with Neb. Rev. Stat. § 75-156; enter an order requiring the Defendant to cease and desist offering any and all telecommunications services for hire in the State of Nebraska and take any and all action consistent with state and federal law that it deems appropriate. A public hearing on this matter is requested.

Dated this 18<sup>th</sup> day of May 2004.

Respectfully Submitted,

MAURICE GENE HAND and JEFFREY L.  
PURSLEY, Complainants

BY: \_\_\_\_\_  
Shanicee Knutson, #21833  
Attorney for the Complainants  
Nebraska Public Service Commission  
300 The Atrium; 1200 N Street  
P.O. Box 94927  
Lincoln, Nebraska 68509  
(402)471-0232

VERIFICATION

STATE OF NEBRASKA     )  
                                  ) ss.  
COUNTY OF LANCASTER )

Maurice Gene Hand, being first duly sworn, deposes and says that he is the duly appointed and qualified Director of the Communications Department of the Nebraska Public Service Commission; that he is the Complainant in the foregoing pleading; that he has read the allegations contained therein and understands them to be true to the best of his knowledge and belief.

\_\_\_\_\_  
Maurice Gene Hand, Complainant

Jeffrey L. Pursley, being first duly sworn, deposes and says that he is the duly appointed and qualified Director of the Nebraska Universal Service Fund Department of the Nebraska Public Service Commission; that he is the Complainant in the foregoing pleading; that he has read the allegations contained therein and understands them to be true to the best of his knowledge and belief.

\_\_\_\_\_  
Jeffrey L. Pursley, Complainant

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of May, 2004.

S E A L

\_\_\_\_\_  
Notary Public

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing COMPLAINT was mailed postage prepaid by U.S. Mail to \_\_\_\_\_ for the Defendant Long Distance Savings at \_\_\_\_\_, this \_\_\_\_\_ day of May, 2004.

\_\_\_\_\_  
Shanicee Knutson

N O T I C E

1. Pursuant to Neb. Admin. Code Title 291, Chapter 1, Section 005.09, the Defendant is hereby notified that an answer to this complaint shall be filed with the Nebraska Public Service Commission at 300 The Atrium, 1200 N Street, P.O. Box 94927, Lincoln, Nebraska 68509. The answer shall admit or deny each material allegation of the complaint. The answer shall assert any affirmative defenses which the Defendant may assert. The answer shall be filed with the Commission within twenty (20) days after service of the complaint. Except for good cause shown, failure to answer will be construed as an admission of the allegations in the complaint.
2. Failure to file an answer or to appear at the hearing allows the Commission to (a) immediately enter an order assessing a civil penalty as provided by law; or (b) to proceed with the hearing and receive evidence of the alleged violation and to assess a civil penalty as provided by law.
3. Upon failure to pay any civil penalty determined by the Commission, such civil penalty unpaid shall constitute a debt to the State of Nebraska and be collectible by civil action in the District Court of Lancaster County, Nebraska.